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Attorneys for H. Gilbert Jones and Julie S. Jones,  
Trustees of the Jones Revocable Trust dated 3/8/90

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:

JACK GARRETT,

Debtor.

) Case No.: 2:05- 12488-TD

) Chapter 7

) OPPOSITION TO MOTION TO DISALLOW  
) CLAIM OF H. GILBERT JONES AND  
) JULIE S. JONES; MEMORANDUM OF  
) POINTS AND AUTHORITIES;  
) DECLARATION OF H. GILBERT JONES

Date: January 27, 2010

Time: 11:00 a.m.

Ctrm: 1345

Roybal Federal Building  
255 East Temple Street  
Los Angeles, CA 90012

H. Gilbert Jones and Julie S. Jones hereby submit their opposition to Motion to Disallow  
Claim of H. Gilbert Jones and Julie S. Jones Trustees of the Jones Revocable Trust dated 3/8/90 as  
follows:

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

Trustee's objection is based on Trustee's allegation that Garrett has no liability to claimant.

Trustee hints that the amount may be wrong, but n further factual support in support of such claim is provided.

Trustee does admit that Garrett is an affiliate of Four Star and 900 Capital Services (900) and that he owned and controlled 50% of the voting power in Four Star and that Garrett was one of two managing members of Four Star.

**II.**

**GARRETT IS PERSONALLY LIABLE ON THE CLAIM**

As will be proven after the Trust has had an opportunity to conduct discovery, Garrett was actively misrepresenting to the Trust the financial status, the purpose of the loans and 900 and Four Star's business.

Garrett was actively participating in a Ponzi Scheme, thereby defrauding the Trust. Garrett used funds from the loans made to 900 and Four Star for his personal use and benefit, contrary to his representations. Under such scenario, Garrett is personally liable for the fraud perpetrated on the Trust.

Trustee claims that only 900 and Four Star may be liable to the wrongs done to the Trust. This is not the law.

Principals of entities are liable for torts committed by them on the entities behalf. For example, in *Michaels v. Benavides*, 61 Cal.App. 4<sup>th</sup> 681, 71 Cal.Rptr. 2d 776 (1998) the court found that a corporate president could be held personally liable for his actions on behalf of his corporation because her personally directed and engaged in many of the wrongful acts himself.

Such is the case here. Garrett was one of the two managing members of Four Star conducting a Ponzi Scheme and converting assets and money from loans by parties like the Trust. Therefore, Garrett is personally liable to the Trust, and the Trust has a valid claim against Garrett for its damages.

III.

**THE LOANS ARE NOT EQUITY INVESTMENTS**

As shown by the Declaration of H. Gilbert Jones, the Trust never converted the loans to equity, never signed the exhibits attached as Exhibit B to trustee's motion, and never intended the loans to be equity.

The Trust did not participate in management and control, and did not have any right to vote. As shown by the attached Declaration of H. Gilbert Jones, the Trust did not exercise the option to convert the loans to equity.

The trustee must file an adversary action to seek subordination of a claim, but has not yet done so.

The documents submitted by Trust provided that the funds for the Trust are loans, with a specific rate of interest.

There is no provision for participation in profits or for voting privileges by the Trust.

The interpretation of the notes are governed by California law, as stated in the notes and agreed upon by the parties.

If the trustee files an adversary action the trust retains its rights to conduct discovery regarding trustee's claim that the loans were really equity and that the claim must be subordinated.

IV.


**CONCLUSION**

The Trust has shown a prima facie claim against Garrett. Any other matter must be decided in an adversary action.

DATED: January 12, 2010

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

By

  
Anne Verdries  
Attorneys for H. Gilbert Jones and Julie S. Jones,  
Trustees of the Jones Revocable Trust dated 3/8/90

**DECLARATION OF H. GILBERT JONES**

I, H. Gilbert Jones, declare as follows:

1. I am one of the trustees of the H. Gilbert Jones and Julie S. Jones, Trustees of the Jones Revocable Trust dated 3/8/90 (Trust”).

2. I have personal knowledge of the facts set forth herein, and if called upon as a witness to testify thereto, I could competently and truthfully do so.

3. As shown by Exhibit A, p. 44 - et seq attached to the Trustee’s Motion the Trust loaned money to 900 Capital Services Inc. (“900”) and Four Star Financial Services, LLC (“Four Star”). In exchange the Trust was given various notes.

4. On several occasions the Trust was given an opportunity by 900 and Four Star to convert the notes and loans to equity, but I never agreed to convert on behalf of the Trust. The amount of the Proof of Claim for the Trust is the amount outstanding on the loans and not paid back.

5. In November, 1994 the Trust was requested by 900 and its lender, First Charter Bank, N.A. (“First Charter”) to sign a Subordination Agreement, subordinating the then outstanding loan of \$200,000 by the Trust to 900 so that First Charter would be paid back first. [Trustee’s Exh. A, pp. 74-79] If the loans of the Trust were not loans but equity investments such a Subordination Agreement would not have been required.

6. At all times it was my intention that the funds provided by the Trust to 900 and Four Star were loans, not equity investments and therefore I refused to convert the loans to equity when the Trust was given the opportunity.

7. I never agreed to and signed the Subordination Agreement and Participation Agreement on behalf of the Trust as attached as Exh. B, pp.93-100 and Exh. B, pp. 101-102.

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8. I would never have loaned funds to 900 or Four Star on behalf of the Trust if the loans had been considered equity investments instead of loans.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on January 12, 2010, at Costa Mesa, California.

  
H. Gilbert Jones

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In re: Jack Garrett

Debtor(s).

Chapter 7

Case No. 2:05-12488-TD

**NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
650 Town Center Drive, Suite 1400, Costa Mesa, CA 92626

A true and correct copy of the foregoing document described as OPPOSITION TO MOTION TO DISALLOW CLAIM OF H. GILBERT JONES AND JULIE S. JONES; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF H. GILBERT JONES, will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On January 12, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Alberta P Stahl trusteeahl@earthlink.net, astahl@ecf.epiqsystems.com  
United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

☒ Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On January 12, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Thomas B. Donovan, United States Bankruptcy Court, Suite 1352, 255 East Temple Street, Los Angeles, CA 90012

☐ Service information continued on attached page

**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on \_\_\_\_\_ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

January 12, 2010

Gaye M. Ambrosi

Date

Type Name

Signature

In re: Jack Garrett	Debtor(s).	Chapter 7 Case No. 2:05-12488-TD
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**ADDITIONAL PARTIES TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

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